IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 1068/2006
(Raju Ram & Ors. V/s State of Rajasthan & Anr.)

Date of Order : 30/08/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. R.S.Choudhary, for the petitioners.
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners have challenged the order dated 16.6.2006 passed by Sessions Judge, Bikaner (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioner against the order dated 10.8.2005 passed by Judicial Magistrate, First Class Nokha, Bikaner (for short 'the trial court' hereinafter) taking cognizance of the offences against the petitioners, was dismissed

I have heard learned counsel for the petitioners and public prosecutor for the State. Carefully gone through the order passed by the trial court as well as by the revisional court.

On a report lodged by complainant, police investigated the matter and filed a challan against some of the accused persons excluding the petitioners. On an application under Section 190 Cr.P.C. and on perusal of the material placed before it, the trial court came to the conclusion that prima-facie there is evidence against the petitioners and therefore, there is ground to proceed against them and accordingly took the cognizance of the offences under Sections 325, 323, 341, 147, 148 and 149 IPC and issued the process. That order came to the challenged by the petitioners before the revisional court and the revisional court dismissed the revision petition. Hence this criminal misc. petition.

In M/s SWIL Ltd. Vs. State of Delhi and Anr. 2001 (6) SCC 670 the Hon'ble Supreme Court held as under:-

> "In our view, from the facts stated above, it is clear that at the stage of taking cognizance of the offence, provisions of Section 190 Cr.P.C. would be applicable. Section 190 inter alia provides that the Magistrate may take cognizance of any offence upon a police report of such facts which constitute an offence. As per this provision, Magistrate takes cognizance of an offence and not the offender. After taking cognizance of the offence, the Magistrate under Section 204 Cr.P.C. is empowered to issue process to the accused. At the stage of issuing process. It is for the Magistrate to decide whether process should be issued against particular person/persons named in the charge sheet and also not named therein. For that purpose, he is required to consider the FIR and the statements recorded by the Police Officer and other documents tendered alongwith the charge-sheet. Further, upon receipt of the police report under section 173 (2) Cr.P.C., the

> Magistrate is entitled to take cognizance of an offence under Section 190 (1) (b) even if the police report is to the effect that no case is made out against the accused by ignoring the conclusion arrived at by the Investigating Officer and independently applying his mind to the facts emerging from the investigation by taking into account the statement of the witnesses examined by the Police. At this stage, there is no question of application of Section 319 Cr.P.C.

The Hon'ble Supreme Court, in M/s. SWIL Ltd. Case (supra), further held as under:-

> "There is no question of referring to the provisions of Section 319 CR.P.C. That provision would come into operation in the course of any inquiry into or trial of an offence. In the present case, neither the Magistrate was holding inquiry as contemplated under Section 2 (g) Cr.P.C., nor had the trial started. He was exercising his jurisdiction under Section 190 of taking cognizance of an offence and issuing process. There is no bar under Section 190 Cr.P.C. that once the process is issued against some accused, on the next date, the Magistrate cannot issue process to some other person against whom there is some material on record, but his name is not included as accused in the charge sheet."

In Raghubans Dubey Vs. State of Bihar, AIR 1967 SC 1167, the Hon'ble Supreme Court held that once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not of offenders; once he takes cognizance of an offence, it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police, some other persons are involved, it is his duty to proceed against those persons. The summoning of the

additional accused is part of the proceeding initiated by his taking cognizance of the offence.

In Rajinder Prasad Vs. Rashid & Ors., 2001 (8) SCC 522, Hon'ble Supreme Court, while considering the provisions of Section 190 of the Code, observed that under this section, a Magistrate has jurisdiction to take cognizance of offences against such persons also who have not been arrested by the police as accused persons, if it appears from the evidence collected by the police that they were prima facie guilty of the offence alleged to have been committed.

In this view of the matter, no case for interference is made out. The petition has no force and is, therefore, dismissed.

(H.R.PANWAR),J.

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